

INITIAL STATEMENT OF REASONS:

This action amends provisions governing immediate family members to include registered domestic partners within the California Department of Corrections and Rehabilitation (Department), California Code of Regulations, Title 15.

Sections 3000, 3045.2, 3170.1, 3176, 3177, and 3815 are being amended in response to a Governor's Office Approval Request and Senate Bill (SB) 205, which amended the Family Code, to include Section 297.5(a) that registered domestic partners shall have the same rights, protections, and benefits; and shall be subject to the same responsibilities, obligations, and duties under law, whether they derive from statutes, administrative regulations, court rules, government policies, common law, or any other provisions or sources of law, as are granted to and imposed upon spouses.

SB 205 states that "No public agency in this state may discriminate against any person or couple on the ground that the person is a registered domestic partner rather than a spouse or that the couple are registered domestic partners rather than spouses....." and "Registered domestic partners shall have the same rights regarding nondiscrimination as those provided to spouses." This act shall be known and may be cited as "the California Domestic Partner Rights and Responsibilities Act of 2003."

Currently the CCR, Title 15, Section 3000, defines Immediate Family Members as legal spouse, natural parents; adoptive parents; if the adoption occurred and a family relationship existed prior to the inmate's incarceration; step parents or foster parents; grandparents; natural, step, or foster brothers or sisters; the inmate's natural and adoptive children; grandchildren; and legal stepchildren of the inmate. The Department is including "registered domestic partner" in the definition "immediate family members," with the terms spouse, husband, or wife.

This bill is intended to help California move closer to fulfilling the promises of inalienable rights, liberty, and equality contained in Sections 1 and 7 of Article 1 of the California Constitution by providing all caring and committed couples, regardless of their gender or sexual orientation, the opportunity to obtain essential rights, protections, and benefits to further the State's interests in promoting stable and lasting family relationships.

Many Californians have formed lasting, committed, and caring relationships with persons of the same sex. These couples share lives together, participate in their communities together and many raise children and care for other dependent family members together. Expanding the rights and creating responsibilities of registered domestic partners would further California's interests in promoting family relationships and protecting family members during life crises. SB 205 gives registered domestic partners the same rights regarding nondiscrimination as those provided to spouses.

This amendment would extend the rights of persons registered as domestic partners such that, registered domestic partners of inmates would be given the same rights as those provided to spouses. This would only apply to registered domestic partners of inmates who are not incarcerated and who live in the community and whose relationship was established prior to the inmate's incarceration. Family visits between two inmates who are registered domestic partners would not be permitted.

Further, Family Code section 297.5(e) provides that to the extent that provisions of California law rely upon federal law in a way that would otherwise cause domestic partners to be treated differently than spouses, "registered domestic partners shall be treated by California law as if federal law recognized a domestic partnership in the same manner as California law." The federal immigration law, at 8 U.S.C. Section 1621(d), upon which Title 15, Section 3815 is based, then provides that a State may allow an illegal alien to be eligible for any State or local public benefit "through the enactment of a State law which affirmatively provides for such eligibility." These statutes together suggest that, notwithstanding their relation to federal immigration law that does not recognize domestic partnerships, any state benefits for parolee-aliens must be equally available to registered domestic partners.

The Department must determine that no alternative considered would be more effective in carrying out the purpose of this action or would be as effective and less burdensome to affected private persons than the action proposed.

Section 3000, Definition is amended to incorporate “registered domestic partner” in the definition “Immediate Family Members” with spouse, husband, or wife. This is necessary to update the CCR Title 15, Section 3000, which defines Immediate Family Members as legal spouse, natural parents; adoptive parents; if the adoption occurred and a family relationship existed prior to the inmate’s incarceration; step parents or foster parents; grandparents; natural, step, or foster brothers or sisters; the inmate’s natural and adoptive children; grandchildren; and legal stepchildren of the inmate. Senate Bill 205 extends the rights and duties of marriage to persons registered as domestic partners and gives registered domestic partners the same rights regarding nondiscrimination as those provided to spouses.

Subsection 3045.2(a) through 3045.2(d)(1) is unchanged.

Subsection 3045.2(d)(2)(E) is amended to refer to the definition of immediate family member. This is necessary to ensure persons registered as domestic partners of inmates will be treated the same as spouses of inmates.

Subsection 3045.2(d)(2)(F) through (f) is unchanged.

Subsection 3170(a) through (d) is unchanged.

Subsection 3170.1(d)(1) is amended to refer to the definition of immediate family members. This is necessary to ensure persons registered as domestic partners of inmates will be treated the same as spouses of inmates.

Subsection 3170.1(d)(2) through (g) is unchanged.

Section 3176 through (a)(8) is unchanged.

Section 3176(a)(9)(D) is amended to refer to the definition of immediate family. This is necessary to ensure persons registered as domestic partners of inmates will be treated the same as spouses of inmates. Also, this act is intended to provide all caring and committed couples the opportunity to obtain essential rights and benefits to further the state’s interests in promoting stable and lasting family relationships during life crises. SB 205 also states “surviving registered domestic partner, following the death of the other partner, shall have the same rights, protections, and benefits, and shall be subject to the same responsibilities, obligations, and duties under the law, whether they derive from statutes, administrative regulations, court rules, government policies, common law, or any other provisions or sources of law, as are granted to and imposed upon a widow or a widower.”

Section 3176(a)(9)(E) through (10)(d) is unchanged.

Section 3177 is amended to refer to the definition of immediate family members. This is necessary to ensure persons registered as domestic partners of inmates will be treated the same as spouses of inmates.

Existing first sentence of second paragraph of Section 3177 is deleted to remove common-law-relationship from being defined as immediate family member and to include registered domestic partner as immediate family member. It is necessary to delete common-law relationship because this relationship to the inmate will not be recognized as “immediate family members” for the purpose of family visiting. Including registered domestic partner in this text is necessary to ensure persons registered as domestic partners of inmates will be treated the same as spouses of inmates.

Section 3177(a) through (b) is unchanged.

Subsection 3177(b)(1) is amended to refer to the definition of family member. This is necessary to ensure persons registered as domestic partners of inmates will be treated the same as spouses of inmates.

Subsection 3177(b)(1)(A) through (g) is unchanged.

Subsection 3815(a) through (d) is unchanged.

Subsection 3815(e)(1) is amended to include Registered Domestic partner (s). SB 205 states “Where necessary to implement the rights of registered domestic partners under this act, gender-specific terms referring to spouses shall be construed to include domestic partners.” Also, the federal immigration law, at 8 U.S.C. Section 1621(d), upon which Title 15, Section 3815 is based, then provides that a State may allow an illegal alien to be eligible for any State or local public benefit "through the enactment of a State law which affirmatively provides for such eligibility." These statutes together suggest that, notwithstanding their relation to federal immigration law that does not recognize domestic partnerships, any state benefits for parolee-alien must be equally available to registered domestic partners.

Subsection 3815(e)(2) through(e)(4) is unchanged.